IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

MFA.No. 1112 of 2000(C)
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OPMV.2231/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/3RD RESPONDENT:

THE OREINTAL INSURANCE CO. LTD. NOW
REP. BY ITS ASST. MANAGER, REGIONAL
OFFICE, METRO PALACE, KOCHI - 18.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS/PETITIONER & RESPONDENTS 1 AND 2:

1. P.K.KISHORE, S/O KARUNAKARAN,
PAREPARAMBIL HOUSE, KADUNGAMANGALAM
P.O., NEAR KOTTAYATHUPRARA, VIA
THIRUVANKULAM, ERNAKULAM DIST.

2. V.T.SALEEP, S/O V.N.THANKAPPAN, VAYALIL
HOUSE, DO. DO.

3. BENNY @ ADIYODI, S/O MATHAI MUTTATHUKATTIL
HOUSE, MUTHUKULAM KARA, PIRAVOM VILLAGE.

BY ADV. SRI.R.SUDHISH
SMT.MANJU SUDHISH

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No. 1112 of 2000

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**JUDGMENT**

Koshy, J.

The Insurance Company filed this appeal when the Tribunal in the impugned award directed it to deposit the amount awarded to the first respondent claimant (he died pending appeal and his legal representatives were impleaed). While the claimant was travelling as a pillion rider in a motor cycle bearing Reg.No.KRE 1572, it met with an accident and he suffered injuries. The owner of the motor cycle was Sri.Saleep, the first respondent before the Tribunal (second respondent in the appeal) and the rider was Sri.Benny, the second respondent before the Tribunal (third respondent in the appeal). The contention of the Insurance Company is that the accident occurred on 20.3.1994 at 7.30 a.m. On the very same day at 10.45 a.m., FIR was

registered as Exhibit B2, on the basis of which Exhibit B3 charge sheet was filed, on the complaint of the owner of the vehicle stating that his scooter was stolen. The criminal case ended in acquittal. At the time of the accident, Benny was riding the vehicle. It is the contention of the Insurance Company that since the scooter was stolen and Benny was riding the scooter, the owner has no vicarious liability and therefore, the Insurance Company has no liability. The Tribunal found on the basis of evidence that the vehicle was not stolen and the above story was not proved and the owner has got vicarious liability. The Tribunal found that the owner, rider as well as the appellant Insurance Company was liable and directed the Insurance Company to deposit the amount. The owner has not filed any appeal against the findings of the Tribunal and he is bound by the decision. The Insurance Company alone filed the appeal.

2. The Apex Court held that a pillion rider is not covered under an Act policy (see the decision in **United India Insurance Co.Ltd. v. Tilak Singh** (2006(2) KLT 884(SC)). The policy also shows that apart from the statutory liability, there was extended coverage for the third party damage. But, no separate amount was paid for insuring the rider or the pillion rider. In view of the above decision of the Apex Court, the appellant Insurance Company is not liable to deposit the amount and the claimant will be free to realise the amount awarded from the owner and rider of the vehicle, as their liability was not disputed in the appeal. The owner and the rider of the vehicle are jointly and severally liable to satisfy the award and we order accordingly. It is submitted that Rs.25,000/- was deposited by the Insurance company as a condition precedent for filing the appeal. On the facts and circumstances of the case, especially when the

claimant died and the legal representatives are impleaded, the above amount can be disbursed to the legal representatives, if it is not already disbursed and it shall not be recovered from the legal representatives of the deceased.

The appeal is allowed in part.

(J.B.Koshy, Judge)

7th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

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M.F.A.No.1112 of 2000

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**JUDGMENT**

7th June, 2007